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M.L. HATCHER, CLK
U.S. BANKRUPTCY COURT
W.D. OF WA AT SEATTLE
BY ________ SEP CLK.

20

Honorable Marc L. Barreca
Chapter 7
Hearing Date: September 7, 2012
Hearing Time: 9:30 a.m
Hearing Site:
700 Stewart St., #7106
Seattle, WA 98101

THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re

ADAM R. GROSSMAN

NO. 10-19817

ADAM R. GROSSMAN'S RESPONSE TO AMENDED DECLARATION OF NO OBJECTION TO TRUSTEE'S OBJECTION TO CLAIMS NUMBERS 20-32

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PAGE 1 OF 20
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Objections Were Timely Filed With The Court

The trustee's attorney has submitted a proposed order stating that the court "[has] received no responses to the Trustee's Objection to each claims" #20 - #32 which were filed by attorney Jeffery Wells.

This statement is false. Responses were filed with time stamps confirming the filings were timely on August 31, 2012. See Docket #412 and #414. I have copied time stamped pages in Exhibit "2".

Still, many people have asked me to continue to file claims on their behalf.

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These Claims Depend On Actions In the Bankruptcy Court And Are Likely Valid

The claims are the result of losses incurred by the defrauding of investors in the Tanager Fund LP as a result of misrepresentations made related to the sale of securities by Jill Borodin directly and indirectly through her attorney which, as represented, defraud investors in the Tanager Fund LP.

The Declaration "DECLARATION OF ADAM R. GROSSMAN VOLUME I OF X" dated August 28, 2012 is incorporated by reference.

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Two Kinds Of Clawbacks

The Trustee and his attorney Ms. Moewes show an ignorance of "clawbacks" in a way that can only be described as gross professional negligence through the failure to perform even the most cursory investigation into the meaning of the word, the circumstances which make it a reality, and the sequence of events which will follow. Clawbacks are real, they will occur much as predicted, in the amounts greater than I originally predicted in my SoFa in mid-2011.

Clawbacks usually take two forms: GP clawbacks (designed to prevent GPs from taking too large a share of the profits) and LP clawbacks (designed to raise money when needed). These clawbacks are the latter. Joanna Strober, who is uniquely qualified to comment on the phenomenon and the specifics of the particular events which occurred here, submitted a declaration in state court in October, 2011, a portion of which is attached in Exhibit 3. It is worth re-reading.

The trustee should have consulted Barron's:

BARRON'S: "clawbacks": a provision in a law or contract that limits or reverses a payment or distribution for specified reasons. For example, a limited partnership agreement might have a clawbacks provision requiring that when cumulative profits are tallied at expiration, distributions received... in excess... will be deemed excessive and returned [or a] clawbacks requires [investors] to contribute... to cover future cash deficiencies.

Stated as simply as possible, when a Fund needs money, it makes a capital call. If proceeds have already been distributed to many investors, they get clawed back.

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No Don Quixote-Style Legal Actions Expected

Clawbacks are real, they will occur much as predicted, in the amounts greater than I predicted in my May, 2011, SoFa but unlike the faux-litigation of the trustee's Don Quixote attorney who often serves process incorrectly resisting free offers to give proper service, names empty companies as defendants, sues trusts which in California are entities incapable of being sued, attempts to quiet title against entities which in California are incapable of vesting title, seeks default judgments which in California are statutorily invalid for matters of title, bases the entire system upon a false and fraudulent accounting from the Superior Court (where the question, "Who owned the money on the wire to Placer title?" cannot be answered with consistency in the currently proposed set of claims recognitions), and with debits that do not equal credits, the clawbacks will start very predictably.

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Fierce and Fast Legal Actions Expected

They will seek to raise a small amount of funding. If a person committing securities fraud had to choose a group of victims most likely to prosecute them, a hedge fund is likely near the top. These are people who are rich; they are familiar with securities and do not like to be robbed; they are smart enough to get mad; and they are already organized into a partnership. The only worse decision that could be made by a would-be-securities-defrauder would be to actually join the partnership for a fixed term where the partnership term was fixed and not soon ending. For the Tanager Fund LP, the end date is December 31, 2016. The other benefit of a hedge fund is that it has access to credit so the partners don't really have to put up much money: they just say, "Go!" and the lawsuits begin. Since the guilty parties can be identified with ease, the outcome is predetermined. The lawsuits will be fast, furious, broad, expensive, and prevailing.

They will not be for show. They will seek to recover nearly $1m (with fees and costs) focused on an estate which already has squandered its money and on law firms weary of covering up series upon series of mistakes.

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The Initial Securities Fraud

The advanced planned conspiracy between Jill Borodin, Jennie Laird, and Karma Zaike directly and indirectly to make false and fraudulent representations and to suppress evidence and omit facts which were essential to make the statements they made, in light of the context in which they were made, not misleading defrauded Tanager Fund investors. The losses are real, they can be categorized and estimated accurately, and the "clawbacks" are simply the means by which investors will initiate the first of the lawsuits to recover the money.

The amounts may vary, but more typically upwards as the existing players are too oblivious to understand the reality of the securities fraud.

Jill Borodin and her attorneys initially defrauded the Tanager Fund by making false and fraudulent claims – statements that were untrue and known to be untrue at the time they were made by the speaker – to ownership rights in excess of 262,000 capital units of Tanager Fund redemptions. In May, 2010, these were worth $255,000 but the replacement value by the time the Fund closed in November has risen to $332,000. Legal costs for which I am indemnified and covered four times over may increase this to $450,000. The cost of my labor which I am entitled to charge for during dissolution (but not operations for partnerships) can modestly increase this to $600,000 – but I would only bill my time as I am entitled to do if it is not paid at the expense of investors.

Many generous people – unsung heroes who were more likely than not the same people who were victimized and robbed by Jill Borodin and Karma Zaike either donated money or quietly waived their claims because of their good nature – but they could very easily, legally submit or claim another $200,000 in costs – maybe $400,000 — increasing the total to $800,000. That will cost at least $200,000 in legal expenses at a minimum to start until people seriously understand

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the damages that have been caused and face the reality of who will pay for them. (Not me.) $1/4 million of fraud started by a rabbi and two attorneys will cost $1m to start if the unsung heroes decide to seek even partial financial restitution.

This is easy to show because the fiscal years are the calendar years and the financial statements for 2010 are independent of 2011, 2012, and 2013. The guilty parties should stop wasting everyone's time with faux-distractions and move towards a resolution. They only cost themselves more money in the end.

The scheme, device, or artifice first became apparent on in June, 2010, when financial trial balloons for defrauding investors were initially announced it was noticeable that a person who is a normally soft-spoken, prominent, Seattle professional familiar with the legal, financial, and accounting professions replied in shock: "I think they are <expletive> crazy."[1]

[1] Anonymous Prominent Seattle Professional, Response to 1st documented attempt to defraud Tanager Fund LP investors. June 2010.

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The Tanager Fund Became Insolvent on December 14, 2010

On December 14, 2010, a day in which there was no activity in any financial account of the Tanager Fund, an insolvency was first introduced by fraudulently reclassifying assets, claims thereto, and partnership accounting that was falsely represented to the Superior Court of Washington State. At the request of Jill Borodin directly and indirectly through her attorney, the court purported to award as part of a divorce settlement proceeds of partner distributions from a Delaware partnership which was neither a party to the dissolution action nor – as specified in the partnership agreement – subject to the jurisdiction of Washington Courts. Nevertheless, the Washington Superior Court upon request did purport to award as part of a marital property settlement assets that did not belong to the marital community or assets purchased with the proceeds from the sale of securities that did not belong to the marital community.

The proceeds were from the sale of securities regulated by the SEC which retains jurisdiction for all of the anti-fraud provisions of the Act, as amended, i.e., securities fraud. This causes incurred by the defrauded investors are very real but likely temporary as investors realize it is more cost effective to litigate when the chances of winning or settling are near 100%.

On October 15, 2011, Ms. Strober submitted a declaration to the state court, a subset copy of which is attached as Exhibit 1 in which she describes potential claw-backs:

I was an investor in the Tanager Fund for many years... As a result of the misclassification of other people's money as Ms. Borodin's money, assets belonging to clients or their equivalent have been involuntarily transferred to Ms. Borodin. This may affect me if the losses are pro-rated across all investors, as GAAP accounting suggests, and part of my redemption is clawed back due to the misclassification of client assets... the classification of a distribution in a family law matter is not necessarily binding on the accounting of a Delaware partnership which by GAAP standards will show an illiquid asset, a $255,000 account receivable (A/R) from the community loan expected to be repaid... The trial Judge's error should be corrected and the client money returned to its rightful owners... I am optimistic that these monies will be returned to their rightful owners soon now that the issue has been identified.

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Ms. Strober was optimistic but not realistic.

Stated as simply as possible, a claw-back may occur when an investment fund determines that some partners have received distributions in excess of their entitlements. Generally, this occurs during the final accounting where partners having a capital deficit are required to return money and partners with a capital surplus are entitled to receive additional money.

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Partnership Agreement Authority For Clawbacks

For the Tanager Fund LP, a summary of the provisions in the partnership agreement relevant to clawbacks is,

1.4 Duration of the Partnership
The Partnership shall... continue... until December 31, 2016.
2.2 Capital Contributions
GP may establish minimum contribution amounts from time to time.
2.3 Capital Redemptions
LPs may request monthly but no more than they have.
14.1 Liability of the Limited Partners
Good Partners: no more than invested.
Bad Partners: liable for losses, damages, penalties.
15. Legal Action by the General Partner
GP fully indemnified by the LPs before taking action.
17.1 Dissolution or Termination
Assets... in proportion to their investment.

Stated as simply as possible, by partnership agreement the Tanager Fund LP is in existence through 2016, the General Partner may call capital as needed, because of the flexible redemption policy partners may be required to return distributions, partners who cause harm are charged for the harm, the General Partner is fully indemnified vis-à-vis legal actions, and upon termination the assets are distributed proportionately. Clawbacks are implicit in 1.4, 2.2, 2.3, 14.1, and 15. 2.3 and 17.1 imply no negative balances and most agreements explicitly prohibit negative capital account balances.

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Claims Are As Valid As The Estate Makes Them

"I would like for my redemption not to be clawed back."

-Joanna Strober

Most investors likely feel this way. Whether the claims I placed for each investor in the Tanager Fund will be valid claims for clawbacks depends on how much money the estate tries to take from the Tanager Fund and the assets it owns.

For these reasons, I believe the claims are valid and will be upheld by the incoming trustee if the estate is not settled by then.

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Delaware State Law Authority (RUPA)

A summary of Delaware State law, Title 6 Del C. § 15 Partnerships based on RUPA is:

§15-203	Partners have no rights to specific property.
§15-204	Presumed partnership property if purchased with partnership assets.
§15-204	Neither held in partnership name nor indication in the instrument needed.
§15-305	Partnership liable if partner misapplies money from a non-partner deposit.
§15-401	Partnerships shall reimburse and indemnify partners...
§15-401	...in the ordinary course of business or for preservation of property.
§15-501	Partners have no rights to specific property.
§15-502	Partnership interest is the only personal property of a partner.
§15-504	Charging orders are exclusive remedy for judgment creditors.
§15-802	A partnership continues until winding up is completed.
§15-409	Reliance on partnership information from other partners is valid if good faith.
§15-806	Partners liable for damages for inappropriate behavior during dissolution.
§15-807	Settlement of accounts and contributions among partners.

(a) In winding up... the assets of the partnership including the contributions of the partners... must be applied to pay or make reasonable provision to pay the partnership's obligations to creditors.

(b) In settling accounts... profits and losses... must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess... A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits...

(c) make reasonable provision to pay partnership obligations that were not known...

(d) If a partner fails to contribute all of the other partners shall contribute...

(e) A partner... may recover... contributions the partner makes [for others]

(f) The estate of a deceased partner is liable...

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Delaware State Law Authority (RULPA)

A summary of Delaware State law, Title 6 Del C. § 17 Limited Partnerships based on RULPA is:

§17-108	Partnerships may indemnify partners or non-partners.
§17-108	Indemnification may include any and all claims and demands whatsoever.
§17-111	The Court of Chancery interprets, applies, and enforces partnership agreements.
§17-304	Partners who erroneously believe they are partners, may ask to apply.[2]
§17-306	Partners who cause harm get punished.
§17-502	Partners must meet their obligations.
§17-502	Partners must always return money or other property.[3]
§17-601	Interim distributions are permitted before the dissolution and winding up.
§17-603	Limited Partners are generally in until the partnership says so and winds up..
§17-605	Partners have no right to demand distribution other than cash.
§17-607	No distributions from insolvent partnerships.
§17-607	Knowingly receiving a distribution during insolvency creates liability.
§17-804	Mandates payment order for winding up: "safe harbor" if followed.
§17-804	Known, possible, unknown(!) creditors w/10-year look-ahead: then partners.
§17-804	Knowingly receiving a distribution during insolvency creates liability.
§17-1001	The Court of Chancery resolves disputes.

Stated as simply as possible, 6 Del C §15-807 covers winding up and settling of accounts: profits and losses are distributed proportionally and if you end if with an excess balance, it is paid to you. If you have a deficit, you must make it up. That is one form of a clawback. Another form could occur if the GP saw in advance the possibility of a clawbacks during the final accounting and issued a capital call in advance. It is related to cash flow and losses and only rarely fraudulent conveyances as suggested by the trustee.

Of note, if there is a large loss towards the end of a partnership and most partners have received distributions prior to a large unexpected loss, the minority of partners who remain do not incur all of that loss themselves. It is proportionally clawed back from long gone partners who are required to return profits – or even principal – in such an amount that all partners end up having the same proportional loss.

2 Neither Mr. Zieve nor Mr. Opie have indicated they will choose this option but their heirs have ten years to decide.

3 The obligation may not be waived unless with consent of every partner.

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Delaware State Law Authority (RULPA) - Selected Citations[4]

§ 17-607. Limitations on distribution.

(a) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership...
(b) A limited partner who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution...

§ 17-804. Distribution of assets.

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors...
(2) Unless otherwise provided in the partnership agreement, to partners and former partners...
(3) Unless otherwise provided in the partnership agreement, to partners...

(b) A limited partnership which has dissolved:

(1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited partnership;

(2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited partnership which is the subject of a pending action, suit or proceeding to which the limited partnership is a party and

(3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited partnership or that have not arisen but that, based on facts known to the limited partnership, are likely to arise or to become known to the limited partnership within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the partnership agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

(c) A limited partner who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A limited partner who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

Dated September 10, 2012, signed in Seattle, WA.

s/Adam R. Grossman/

[4] RCW is similar.

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Exhibit 1

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

In re the Marriage of: JILL IRINA BORODIN, Petitioner, and ADAM REED GROSSMAN, Respondent.	)	NO. 09-3-02955-9 SEA **DECLARATION JOANNA STROBER**

I, Joanna Strober, declare as follows:

My name is Joanna Strober. I live in California. I am over the age of 18.

I am in a unique position to be able to make this declaration because:

1) I was trained as an attorney and I currently work Sterling Stamos Investment Management in the role of Managing Partner and I have extensive knowledge of Fund operations and accounting

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2) I have personal knowledge of the financing of the Glennview purchase post-separation.

I was disheartened to learn that the trial Judge ruled the $255,000 of purchase money was community property when I was personally involved with the financing and participated in conference calls that discussed the financing in detail which was always based upon 100% new debt post separation and not community property.

3) I was an investor in the Tanager Fund for many years and redeemed my units in full near the closing of the Fund. As a result of the misclassification of other people's money as Ms. Borodin's money, assets belonging to clients or their equivalent have been involuntarily transferred to Ms. Borodin.

This may affect me if the losses are pro-rated across all investors, as GAAP accounting suggests, and part of my redemption is clawed back due to the misclassification of client assets in a legal action to which I was not party and had no standing.

I have not received my K-1 for 2010. I understand this is due for at least two reasons. First, there is a dispute over the responsibility of the issuance of the K-1's . Second, a preference not to report a loss due to misclassified money balanced by an expected future gain of the recovered money as the

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classification of a distribution in a family law matter is not necessarily binding on the accounting of a Delaware partnership which by GAAP standards will show an illiquid asset, a $255,000 account receivable (A/R) from the community loan expected to be repaid.

I would like for my redemption not to be clawed back. The trial Judge's error should be corrected and the client money returned to its rightful owners but I have not yet had any standing for which to make a claim or have my interests represented since a sequence of events will unfold slowly.

I am optimistic that these monies will be returned to their rightful owners soon now that the issue has been identified.

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Exhibit 2

Honorable Marc L. Barreca
Hearing Date and Time:
September 7, 2012, 9:30 a.m.
Hearing Location:
700 Stewart St., #7106
Seattle, WA 98101
Response Due:
August 31, 2012
Chapter 7

FILED
Western District of Washington
at Seattle
AUG 31 2012
MARK L. HATCHER, CLERK
OF THE BANKRUPTCY COURT

THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re ADAM R. GROSSMAN	NO. 10-19817 STATEMENT IN RESPONSE TO OBJECTION TO CLAIM TANAGER FUND LP

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Honorable Marc L. Barreca
Hearing Date and Time:
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Hearing Location:
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Response Due:
August 31, 2012
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AUG 31 2012
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OF THE BANKRUPTCY COURT

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re ADAM R. GROSSMAN	NO. 10-19817 STATEMENT IN RESPONSE TO OBJECTION TO CLAIM PTARMIGAN FUND LLC

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